

lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office;

(8) shall advise the President, through the Secretary of Commerce, on national and certain international intellectual property policy issues;

(9) shall advise Federal departments and agencies on matters of intellectual property policy in the United States and intellectual property protection in other countries;

(10) shall provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection;

(11) may conduct programs, studies, or exchanges of items or services regarding domestic and international intellectual property law and the effectiveness of intellectual property protection domestically and throughout the world;

(12)(A) shall advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) may conduct programs and studies described in subparagraph (A); and

(13)(A) in coordination with the Department of State, may conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) with the concurrence of the Secretary of State, may authorize the transfer of not to exceed \$100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and other matters.

(c) **CLARIFICATION OF SPECIFIC POWERS.**—(1) The special payments under subsection (b)(13)(B) shall be in addition to any other payments or contributions to international organizations described in subsection (b)(13)(B) and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

(2) Nothing in subsection (b) shall derogate from the duties of the Secretary of State or from the duties of the United States Trade Representative as set forth in section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

(3) Nothing in subsection (b) shall derogate from the duties and functions of the Register of Copyrights or otherwise alter current authorities relating to copyright matters.

(4) In exercising the Director's powers under paragraphs (3) and (4)(A) of subsection (b), the Director shall consult with the Administrator of General Services.

(5) In exercising the Director's powers and duties under this section, the Director shall consult with the Register of Copyrights on all copyright and related matters.

(d) **CONSTRUCTION.**—Nothing in this section shall be construed to nullify, void, cancel, or in-

terrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4712], Nov. 29, 1999, 113 Stat. 1536, 1501A-572; Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 3 (R.S. 478).
“Certificates of trade-mark registrations” is added, see note under section 1. Changes in language are made and the specific date eliminated.

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b)(4)(A), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of the act related to management and disposal of Government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

The Public Buildings Act, referred to in subsec. (b)(4)(A), probably means Pub. L. 86-249, Sept. 9, 1959, 73 Stat. 479, as amended, known as the Public Buildings Act of 1959, which is classified principally to chapter 12 (§ 601 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 40 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b)(4)(A), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§ 11301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (b)(4)(A). Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

1999—Pub. L. 106-113 amended section catchline and text generally. Prior to amendment, text read as follows: “The Patent and Trademark Office shall have a seal with which letters patent, certificates of trademark registrations, and papers issued from the Office shall be authenticated.”

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32 of this title.

§ 3. Officers and employees

(a) **UNDER SECRETARY AND DIRECTOR.**—

(1) **IN GENERAL.**—The powers and duties of the United States Patent and Trademark Office shall be vested in an Under Secretary of

Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this title referred to as the “Director”), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who has a professional background and experience in patent or trademark law.

(2) DUTIES.—

(A) IN GENERAL.—The Director shall be responsible for providing policy direction and management supervision for the Office and for the issuance of patents and the registration of trademarks. The Director shall perform these duties in a fair, impartial, and equitable manner.

(B) CONSULTING WITH THE PUBLIC ADVISORY COMMITTEES.—The Director shall consult with the Patent Public Advisory Committee established in section 5 on a regular basis on matters relating to the patent operations of the Office, shall consult with the Trademark Public Advisory Committee established in section 5 on a regular basis on matters relating to the trademark operations of the Office, and shall consult with the respective Public Advisory Committee before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations which are subject to the requirement to provide notice and opportunity for public comment under section 553 of title 5, United States Code, as the case may be.

(3) OATH.—The Director shall, before taking office, take an oath to discharge faithfully the duties of the Office.

(4) REMOVAL.—The Director may be removed from office by the President. The President shall provide notification of any such removal to both Houses of Congress.

(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

(1) DEPUTY UNDER SECRETARY AND DEPUTY DIRECTOR.—The Secretary of Commerce, upon nomination by the Director, shall appoint a Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director. The Deputy Director shall be a citizen of the United States who has a professional background and experience in patent or trademark law.

(2) COMMISSIONERS.—

(A) APPOINTMENT AND DUTIES.—The Secretary of Commerce shall appoint a Commissioner for Patents and a Commissioner for Trademarks, without regard to chapter 33, 51, or 53 of title 5, United States Code. The Commissioner for Patents shall be a citizen of the United States with demonstrated management ability and professional background and experience in patent law and serve for a term of 5 years. The Commissioner for Trademarks shall be a citizen of the United States with demonstrated man-

agement ability and professional background and experience in trademark law and serve for a term of 5 years. The Commissioner for Patents and the Commissioner for Trademarks shall serve as the chief operating officers for the operations of the Office relating to patents and trademarks, respectively, and shall be responsible for the management and direction of all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively. The Secretary may reappoint a Commissioner to subsequent terms of 5 years as long as the performance of the Commissioner as set forth in the performance agreement in subparagraph (B) is satisfactory.

(B) SALARY AND PERFORMANCE AGREEMENT.—The Commissioners shall be paid an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service established under section 5382 of title 5, United States Code, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of title 5, United States Code. The compensation of the Commissioners shall be considered, for purposes of section 207(c)(2)(A) of title 18, United States Code, to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of title 18, United States Code. In addition, the Commissioners may receive a bonus in an amount of up to, but not in excess of, 50 percent of the Commissioners’ annual rate of basic pay, based upon an evaluation by the Secretary of Commerce, acting through the Director, of the Commissioners’ performance as defined in an annual performance agreement between the Commissioners and the Secretary. The annual performance agreements shall incorporate measurable organization and individual goals in key operational areas as delineated in an annual performance plan agreed to by the Commissioners and the Secretary. Payment of a bonus under this subparagraph may be made to the Commissioners only to the extent that such payment does not cause the Commissioners’ total aggregate compensation in a calendar year to equal or exceed the amount of the salary of the Vice President under section 104 of title 3, United States Code.

(C) REMOVAL.—The Commissioners may be removed from office by the Secretary for misconduct or nonsatisfactory performance under the performance agreement described in subparagraph (B), without regard to the provisions of title 5, United States Code. The Secretary shall provide notification of any such removal to both Houses of Congress.

(3) OTHER OFFICERS AND EMPLOYEES.—The Director shall—

(A) appoint such officers, employees (including attorneys), and agents of the Office as the Director considers necessary to carry out the functions of the Office; and

(B) define the title, authority, and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Director may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation.

(4) TRAINING OF EXAMINERS.—The Office shall submit to the Congress a proposal to provide an incentive program to retain as employees patent and trademark examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent and trademark examiners.

(5) NATIONAL SECURITY POSITIONS.—The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances, in order to maintain the secrecy of certain inventions, as described in section 181, and to prevent disclosure of sensitive and strategic information in the interest of national security.

(c) CONTINUED APPLICABILITY OF TITLE 5, UNITED STATES CODE.—Officers and employees of the Office shall be subject to the provisions of title 5, United States Code, relating to Federal employees.

(d) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Office shall adopt all labor agreements which are in effect, as of the day before the effective date of the Patent and Trademark Office Efficiency Act, with respect to such Office (as then in effect).

(e) CARRYOVER OF PERSONNEL.—

(1) FROM PTO.—Effective as of the effective date of the Patent and Trademark Office Efficiency Act, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Office, without a break in service.

(2) OTHER PERSONNEL.—Any individual who, on the day before the effective date of the Patent and Trademark Office Efficiency Act, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Office, as necessary to carry out the purposes of this Act,¹ if—

(A) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

(B) such individual serves in a position that performed work in support of the Patent and Trademark Office during at least half of the incumbent's work time, as determined by the Secretary of Commerce; or

(C) such transfer would be in the interest of the Office, as determined by the Secretary of Commerce in consultation with the Director.

Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

¹ So in original.

(f) TRANSITION PROVISIONS.—

(1) INTERIM APPOINTMENT OF DIRECTOR.—On or after the effective date of the Patent and Trademark Office Efficiency Act, the President shall appoint an individual to serve as the Director until the date on which a Director qualifies under subsection (a). The President shall not make more than one such appointment under this subsection.

(2) CONTINUATION IN OFFICE OF CERTAIN OFFICERS.—(A) The individual serving as the Assistant Commissioner for Patents on the day before the effective date of the Patent and Trademark Office Efficiency Act may serve as the Commissioner for Patents until the date on which a Commissioner for Patents is appointed under subsection (b).

(B) The individual serving as the Assistant Commissioner for Trademarks on the day before the effective date of the Patent and Trademark Office Efficiency Act may serve as the Commissioner for Trademarks until the date on which a Commissioner for Trademarks is appointed under subsection (b).

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 85-933, § 1, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 86-370, § 1(a), Sept. 23, 1959, 73 Stat. 650; Pub. L. 88-426, title III, § 305(26), Aug. 14, 1964, 78 Stat. 425; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-601, § 1, Jan. 2, 1975, 88 Stat. 1956; Pub. L. 97-247, § 4, Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-366, § 4, Oct. 25, 1982, 96 Stat. 1760; Pub. L. 98-622, title IV, § 405, Nov. 8, 1984, 98 Stat. 3392; Pub. L. 105-304, title IV, § 401(a)(1), Oct. 28, 1998, 112 Stat. 2887; Pub. L. 106-44, § 2(c), Aug. 5, 1999, 113 Stat. 223; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4713], Nov. 29, 1999, 113 Stat. 1536, 1501A-575.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 2 (R.S. 476, amended (1) Feb. 15, 1916, ch. 22, § 1, 39 Stat. 8, (2) Feb. 14, 1927, ch. 139, § 1, 44 Stat. 1098, (3) Apr. 11, 1930, ch. 132, § 1, 46 Stat. 155).

The temporary designation of the assistant commissioner as Commissioner in case of a vacancy in office is added. This will eliminate complications since present applicable general statutes (5 U.S.C., 1946 ed., § 7) permit a vacancy to be temporarily filled only for not more than 30 days.

Changes in language are made. "Assistant commissioners" is used in the second sentence (and elsewhere in the bill) as referring to all three assistants.

This entire title is subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263) which vests all functions of the Patent Office in the Secretary of Commerce and authorizes delegation by him. It has been found impractical to so word the various sections of the title, and a general provision has been inserted as the second paragraph of this section of the bill, leaving the wording of various sections of the title in terms of officers previously specified and to whom the functions presently stand delegated.

REFERENCES IN TEXT

For the effective date of the Patent and Trademark Office Efficiency Act, referred to in subsecs. (d) to (f), as 4 months after Nov. 29, 1999, see section 1009(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

AMENDMENTS

1999—Pub. L. 106-113 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

“(a) There shall be in the Patent and Trademark Office a Commissioner of Patents and Trademarks, a Deputy Commissioner, two Assistant Commissioners, and examiners-in-chief appointed under section 7 of this title. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents and Trademarks, the Deputy Commissioner, and the Assistant Commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law shall appoint all other officers and employees.

“(b) The Secretary of Commerce may vest in himself the functions of the Patent and Trademark Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

“(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.

“(d) The Commissioner of Patents and Trademarks shall be an Assistant Secretary of Commerce and shall receive compensation at the rate in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code.

“(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under section 5332 of title 5.”

Subsec. (d). Pub. L. 106-44 struck out “, United States Code” after “title 5”.

1998—Subsec. (d). Pub. L. 105-304 substituted “in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code” for “prescribed by law for Assistant Secretaries of Commerce”.

1984—Subsec. (e). Pub. L. 98-622 added subsec. (e).

1982—Subsec. (a). Pub. L. 97-247 struck out “not more than fifteen” after “two Assistant Commissioners, and”, and inserted “appointed under section 7 of this title” after “examiners-in-chief”.

Subsec. (d). Pub. L. 97-366 added subsec. (d).

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”, and “Commissioner of Patents and Trademarks” for “Commissioner of Patents”, wherever appearing.

Subsec. (a). Pub. L. 93-601 designated first par. as subsec. (a), redesignated first assistant commissioner as a Deputy Commissioner, granted authority for appointment of not more than fifteen examiners-in-chief to Secretary of Commerce instead of the President, and struck out provision relating to performance by assistant commissioners of duties assigned by Commissioner.

Subsecs. (b), (c). Pub. L. 93-601 designated second and third pars. as subsecs. (b) and (c), respectively.

1964—Pub. L. 88-426 repealed provisions which prescribed annual rate of compensation of Commissioner.

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of examiners-in-chief.

1958—Pub. L. 85-933 increased number of examiners-in-chief from nine to not more than fifteen and specified annual compensation of Commissioner.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(b) of Pub. L. 98-622 provided that: “The amendments made by sections 401, 402, and 405 of this

Act [amending this section and sections 361, 366, 371, 372, and 376 of this title] shall take effect six months after the date of the enactment of this Act [Nov. 8, 1984].”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 4(b) of Pub. L. 93-601 provided that: “This Act [amending this section and sections 7 and 151 of this title and enacting provisions set out as a note under section 151 of this title] shall be effective upon enactment [Jan. 2, 1975]. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.”

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 7(b) of Pub. L. 86-370 provided that: “Sections 1 [amending this section, section 7 of this title, and provisions set out as a note below], 3 [amending sections 2205 and 2208 of former Title 5, Executive Departments and Government Officers and Employees], and 6 [amending section 1082 of former Title 5 and section 903 of Title 20, Education] of this Act shall become effective on the first day of the first pay period which begins after the date of enactment of this Act [Sept. 23, 1959].” Such section 7(b) was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 660.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

EXISTING POSITIONS, COMPENSATION, AND APPOINTMENTS UNAFFECTED BY PUB. L. 86-370 UNTIL ACTION TAKEN UNDER AMENDMENTS

Section 1(c) of Pub. L. 86-370 provided that: “The amendments made by this section [amending sections 1 and 7 of this title] shall not affect—

“(1) any position of examiner-in-chief or designated examiner-in-chief existing immediately prior to the effective date of this section [see Effective Date of 1959 Amendment note set out above], or

“(2) any incumbent of any such position, his appointment thereto, his rate of compensation, or his right to receive such compensation, until appropriate action is taken under authority of such amendments.”

§ 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent and Trademark Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they